

EU GUIDELINES ON FREEDOM OF RELIGION OR BELIEF IN PRISON

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Religion's right occupies a particular place within prison. In Europe prisons are state institutions, places in which the state keeps people who were sentenced for having committed crimes in detention, limiting their freedom and thereby punishing them in the name of the society it represents.¹

Why do we have to deal with this question? Kent R. Kerley answer for my question: "After the family the faith was the second major factor that ex-prisoners motivate to make positive changes in their lives following release."² However, religion is in principle part of a protected private sphere, that of religious freedom, which is a human right, even in prison.

European prison institutions are not permitted to deprive individuals of them of conscience or religion. Although a particular frame of security and deprivation is set.³

Freedom of thought, conscience and religion: general considerations. Guarantees of religious liberty and respect for conscience and belief are inevitably found in the constitutional orders of liberal democratic societies and in international and regional human rights instruments. Examples abound, each with perhaps subtly different emphases. In particular, Article 18 of the Universal Declaration on Human Rights of 1948 provides that:

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

¹ APVV-16-0362 Privatizácia trestného práva-hmotnoprávne, procesnoprávne, kriminologické a organizacno-technické aspekty

² Kent R. KERLEY: *Religious Faith in Correctional Context*. Firstforumpress, Colorado, USA 2014, 149.

³ Irene BECCI: *Imprisoned Religion*. ASHGATE Publishing Company, Burlington, USA, 2012, 79.

Freedom of religion or belief is protected by Article 18 of the International Covenant on Civil and Political Rights (ICCPR) which says:

1. *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*
2. *No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*
3. *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*
4. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

According to the 1981 UN Declaration of the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Article 6, the right to freedom of thought, conscience, religion, or belief includes, inter alia, the following freedoms:

- a. *To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;*
- b. *To establish and maintain appropriate charitable or humanitarian institutions;*
- c. *To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;*
- d. *To write, issue and disseminate relevant publications in these areas;*
- e. *To teach a religion or belief in places suitable for these purposes;*
- f. *To solicit and receive voluntary financial and other contributions from individuals and institutions;*
- g. *To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;*
- h. *To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;*
- i. *To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.*

Such guarantees are found in other instruments at a regional level for example, Article 12 of the American Convention on Human Rights provides that freedom of conscience and religion includes the "freedom to maintain or to change one's reli-

gion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private", while Article 8 of the African Charter on Human and Peoples' Rights specifies that "freedom of conscience, the profession and free practice of religion shall be guaranteed" and further that "no one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms".

In 2013, the European Union adopted the EU Guidelines on Freedom of Religion or Belief⁴ (FoRB) for which *Human Rights Without Frontiers International* was pleased to be involved in the drafting process along with religious communities and other civil society organisations.

The Guidelines are an important reference tool for EU institutions in third countries for identifying FoRB violations and assisting citizens who have been discriminated against on the basis of their religion or beliefs:

Under international law, FoRB has two components:

- a) the freedom to have or not to have or adopt (which includes the right to change) a religion or belief of one's choice, and
- b) the freedom to manifest one's religion or belief, individually or in community with others, in public or private, through worship, observance, practice and teaching.

In the European Convention on Human Rights, these key aspects of freedom of thought, conscience and religion or belief are found in three separate provisions. First, and most crucially, Article 9 provides that:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.
3. Article 14 of the Convention makes explicit reference to religious belief as an example of a prohibited ground for discriminatory treatment:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

⁴ EU Guidelines on the promotion and protection of freedom of religion or belief FOREIGN AFFAIRS Council meeting, Luxembourg, 24 June 2013, <https://eeas.europa.eu/sites/eeas/files/137585.pdf>

Prison authorities will be expected to recognize the religious needs of those deprived of their liberty by allowing inmates to take part in religious observances. Thus where religion or belief dictates a particular diet, this should be respected by the authorities⁵ Further, adequate provision should be made to allow detainees to take part in religious workshop or to permit them access to spiritual guidance.

In the related cases of *Poltoratskiy v. Ukraine* and *Kuznetsov v. Ukraine* prisoners on death row complained that they had not been allowed visits from a priest nor to take part in religious services available to other prisoners.

The applicants succeeded in these cases on the ground, that these interferences had not been in accordance with the law as the relevant prison instruction could not so qualify within the meaning of the Convention⁶ Article 9, cannot for example, be used to require recognition of a special status for prisoners who claim that wearing prison uniform and being forced to work violate their beliefs.⁷

The need to be able to identify prisoners may thus warrant the refusal to allow a prisoner to grow a beard, while security considerations may justify denial of the supply of a prayer-chain. These state obligations under the European Convention on Human Rights are also reflected in the European Prison Rules.

These Rules are non-binding standards which aim to ensure that prisoners are accommodated in material and moral terms respecting their dignity and accorded treatment which is non-discriminatory, which recognises religious beliefs, and which sustains health and self-respect.

Thus the Rules provide that “the prison regime shall be organised so far as is practicable to allow prisoners to practice their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs”.

However, prisoners may not be compelled to practice a religion or belief, to attend religious services or meetings, to take part in religious practices or to accept a visit from a representative of any religion or belief.⁸ The Rules also make clear that prisoners should be given meals which comply with their religious requirement.⁹ The prison authority has an obligation under Article 9 to take account of their religious beliefs and any restrictions have to be justified under Article 9(2). Prisoners are asked their religious affiliation at the time they enter prison. Of course, prisoners should also be protected from pressure to change their religious affiliation, so chaplains should not visit prisoners without their consent, or seek to persuade them to change their religious affiliation.

⁵ Appl. no. 5947/72, *X v. the United Kingdom*, (1976), DR5, 8.

⁶ *Poltoratskiy v. Ukraine*, no. 38812/97, Reports 2003-V; and *Kuznetsov v. Ukraine*, no. 39042/97, 29 April 2003.

⁷ Appl. no. 8317/78, *McFeely and others v. the United Kingdom*, (1980) DR20, 44.

⁸ European Prison Rules, Recommendation Rec (2006) 2, Rules 29 (2)–(3)

⁹ European Prison Rules, Recommendation Rec (2006) 2, Rules 22 (1)

The number of Muslim prisoners has increased sharply in recent years and they have received more attention and their treatment has high-lighted the issue of treatment of religious minorities.

The treatment of Muslim women raises particular issues, for example, in relation to full body searching of Muslim women. Female visitors or prisoners wearing veil should not be asked to uncover themselves in public in the presence of a male officer, arrangement should be made to remove them in the private in the presence of female staff. Female prisoners should have access to women doctors.¹⁰

Conclusion, the convict's life typically has three stages: he starts in a life of a crime, then following arrest, he is imprisoned, and in the penitentiary, he may undergo some personal change that leads to and culminates in a greater religious awareness.¹¹

¹⁰ Susan EASTON: *Prisoners' Rights*. Routledge London and NewYork, 2011, 203.

¹¹ Robert Day MCCONELL: *The penitentiary: Prison control and the genesis of prison religion, self-control in a total institution*. Dissertation Services, University of Virginia, Department of Sociology, 2010, 41.